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David A. Guerra  
933 OLEANDER WAY SOUTH, SUITE 4  
SOUTH PASADENA, FL 33707

In re Application of STANISHLAW WIERZBIKCKI	:
Application No.: 10/526,910	:
PCT Application No.: PCT/AU03/01135	:
Int. Filing Date: 4 September 2003	: DECISION ON PETITION
Priority Date Claimed: 4 September 2002	: UNDER 37 CFR 1.137(b)
Attorney Docket No.: AP049-05	:
For: SOCK PEG	:
	:

Applicants' Petition For Revival Under 37 CFR 1.137(b), filed in the United States Patent and Trademark Office on 27 September 2005, is GRANTED.

#### BACKGROUND

On 4 September 2003, applicant filed international application PCT/AU03/01135. The international application claims a priority date of 4 September 2002 and designates the United States. The deadline for paying the basic national fee in the United States and providing a copy of the international application as required under 37 CFR 1.495(b) was thirty months from the priority date, that is 4 March 2005. Applicant missed this deadline.

On 7 March 2005, three days after the deadline, a copy of the international application as required by 35 U.S.C. 371(c)(2), an executed declaration as required by 35 U.S.C. 371(c)(4), an Information Disclosure Statement under 37 CFR 1.97 and 1.98, an Application Data Sheet under 37 CFR 1.76, a power of attorney and/or change of address letter and various fees totaling \$500.00, including the basic national fee was received.

On 19 September 2005, a notice of abandonment was mailed to the applicant.

On 27 September 2005, applicant filed the instant petition for revival accompanied by the petition fee of \$750.00 as required by 37 CFR 1.137(b).

#### DISCUSSION

A petition to revive an abandoned application under 37 CFR 1.137(b) must be filed without intentional delay from the time the application became abandoned and/or applicant first became aware of the abandoned status of the application. A petition under 37 CFR 1.137(b) must be accompanied by (1) a proper reply, (2) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition

was unintentional, (3) the petition fee required by law, and (4) a terminal disclaimer and fee (if the international application was filed prior to June 8, 1995). A payment of the basic national fee constitutes a proper reply for entry into the national stage.

With regard to the requirements of 37 CFR 1.137(b)(1), the reply to the Notice of Abandonment is satisfied.

With regard to the requirements of 37 CFR 1.137(b)(2), the payment of the basic national fee of \$500.00 is satisfied.

With regard to 37 CFR 1.137(b)(3), applicant's assertion on page 2 of the petition that "the national phase entry of the above-identified application under 35 U.S.C. 371 was unintentionally filed without the copy of the international application by the 30<sup>th</sup> month" has been construed as meaning "the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition was unintentional" in accordance with 37 CFR 1.137(b)(3). If this interpretation is not correct, applicants are required to promptly notify this Office in response to this decision.

With regard to 37 CFR 1.137(b)(4), a terminal disclaimer is not required because the application was filed on or after 08 June 1995.

A review of the application file reveals that applicant has satisfied the requirements of 37 CFR 1.137(b), and that the application satisfies the requirements under 35 U.S.C. 371 for entry into the national stage in the United States.

Applicant is reminded that the fee for filing a declaration after the 30<sup>th</sup> month has not been paid.

### CONCLUSION

For the above reasons, the petition filed on 27 September 2005 under 37 CFR 1.137(b) is GRANTED without prejudice.

The application has an international filing date of 04 September 2003, under 35 U.S.C. 363, and a 35 U.S.C. 371(c)(1),(2), and (4) date of 07 March 2005.

This application is being forwarded to the National Stage Processing Branch of the International Division for further processing in accordance with this decision including the preparation and mailing of a Notification of Missing Requirements, form 905, requiring the late fee for the declaration.

  
Gary L. Welch  
PCT Legal Administration Detailee  
Telephone: 571-272-6095  
Facsimile: 571-273-0459

  
Richard Cole  
PCT Legal Examiner  
Office of PCT Legal Administration